

Given
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ARIZONA ATTORNEY GENERAL

January 20, 1955
Letter Opinion
No. 55-9-

Mr. K. S. Wingfield,
Administrator
Arizona Power Authority

Re: Rights-of-way for power transmission across certain state-owned lands.

Dear Mr. Wingfield:

I am advised that Arizona Power Authority has obtained rights-of-way for power transmission purposes across certain lands owned by the State of Arizona. You are interested in determining whether or not the Arizona Power Authority must pay a rental to the State Land Department for the use of the State land involved in the rights-of-way.

A.C.A. 11-601, 1939, provides that the State Land Department "may grant rights of way for any purpose it deems necessary," and makes provision for compensation for any such rights-of-way.

A.C.A. 11-1001 provides that:

"The State may, whenever necessary. . .
for the uses of any of its departments. . .
take over any state lands and improvements
therefor, and the department. . .so using
the said lands shall lease the same and shall
pay such rental as the commission may fix."

Pursuant to the Arizona Enabling Act and certain statutes, i.e., A.C.A. 11-1101, funds derived from the sale or rental of certain state lands are to be used for school purposes only.

The examination of the statutes thus far would indicate that generally, while a State agency may lease or obtain rights-of-way over State lands, it must pay such rental as

the commissioner may deem proper and, that such rental, if it is for land designated as "school lands", must be credited to the appropriate school fund.

However, this general picture is altered by the following. 75-1905, A.C.A. 1939, as amended, read in its pertinent part as follows:

"The use of necessary real property, now or hereafter owned by the state, not dedicated to public use, which may be necessary as sites for any project, or facility or rights of way of the authority is hereby granted."

This section grants to the Arizona Power Authority, rights-of-way over State lands. It makes no provision for compensation and, in fact, the language carries the rather clear intent to grant such right-of-way without compensation.

The possible or apparent conflict between A.C.A. 11-601 and 11-1001, which require compensation and A.C.A. 75-1905, which indicates no compensation is required, is resolved somewhat by the following case. STATE OF ARIZONA v. THE STATE LAND DEPARTMENT, 62 Ariz. 248, 156 P. 2d 901, was decided in 1945, before the passage of A.C.A. 75-1905, but it construed A.C.A. 11-601 and 11-1001, with respect to the question of whether or not those sections and 11-1101 required a state department or agency to pay compensation for rental or leases of State land.

In this case, the agency seeking to lease state land without compensation was the State Highway Department, which desired the land for public highway purposes.

The Court said:

"It is the position of the land commissioner that under the terms of Section 11-1001, the legislature has assigned him the duty of collecting rental for rights-of-way which the state, in pursuance of its sovereign right, may require or use. A cursory reading of this section might lead to this view, but when closely analyzed it is obvious that the legislature neither in terms nor by implication intended the section to apply to rights-of-way for highway purposes.

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"We quote the concluding portion of the statute: 'and the department or institution SO USING the said lands shall lease the same and shall pay such rental as the commissioner shall fix.' The highway department is in no sense the user of the highway within the meaning of the statute. The highway is used by the public. What the section really means is that if any department of the state wishes to take over any state lands for its own use, such as construction of buildings, shops, or for any other purpose for the convenience or use of the particular department, it must secure a lease and pay such rental as the commissioner shall fix. We hold, however, that Section 11-1001 has no application whatsoever to rights-of-way for highways, and therefore the commissioner has no right to require that such right-of-way shall be leased or to compel the payment of rental thereon."

Under this case then, whether or not compensation must be paid for lease of state land by a state agency depends on whether the land obtained is to be used by the State agency "for its own use" or for "use by the public". Here, as in the case of highways, the "use" is by the public. The rights-of-way are not taken by the Arizona Power Authority "for its own use."

The use of rights-of-way by the Arizona Power Authority for transmission of power used by the public is analogous enough to the use of land for highway purposes that the case cited is deemed a controlling interpretation of the applicable statutes.

In summary then, based on the foregoing discussion, it is the opinion of the writer that the Arizona Power Authority is not required to pay rental for rights-of-way over state land when such rights-of-way are used for the transmission of power for public use.

Yours very truly,

ROBERT MORRISON
The Attorney General

By: JAMES H. GREEN, JR.
Special Assistant to
The Attorney General

JHG:or